

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
ATHENS DIVISION

MERIAL LIMITED and MERIAL S.A.S

Plaintiffs and Counterclaim-Defendants,

v.

VELCERA, INC. and FIDOPHARM, INC.

Defendants and Counterclaim-Plaintiffs.

Case No. 3:11-cv-00157-CDL

EMERGENCY MOTION TO AMEND SCHEDULING ORDER
AS TO EXPERT REPORT DEADLINES

Pursuant to Federal Rule of Civil Procedure 16, Plaintiffs Merial Limited and Merial S.A.S. (collectively, “Merial”) move this Court to amend the scheduling order in this case to allow for additional time to submit expert reports. (*See* Dkt. 30, Feb. 3, 2012, Scheduling/Discovery Order) (the “Scheduling Order”).

The parties’ burden of proof expert reports are currently due on March 13, 2012. (*Id.*, pp. 4-5). Non-burden of proof expert reports are currently due on April 12, 2012. Rebuttal expert reports are currently due on May 14, 2012. (*Id.*) Discovery is set to close on June 15, 2012. (*Id.*) Given the quickly-approaching expert report deadline, and the parties’ inability to reach agreement on this issue, Merial respectfully believes that emergency relief is appropriate.

Merial has good cause for this request. Fed. R. Civ. P. 16(b)(4). Merial wishes to extend the deadlines for these expert reports to allow the parties additional time to exchange and review the documents required by their respective experts to form their opinions in this matter, particularly with regard to damages, without extending the overall case schedule or otherwise

delaying the resolution of this matter. The parties have engaged in good faith, but ultimately unsuccessful, negotiations of an agreed protective order. The sole remaining issue in dispute, concerning the redaction of documents, was submitted to the Court for resolution on March 7, 2012 in the Joint Motion for Protective Order. (Dkt. 33).

The present lack of a protective order, despite the parties' best efforts to reach agreement, has prevented the parties from beginning meaningful discovery. Indeed, seeking to move this case along expeditiously, Merial served Velcera with interrogatories and requests for production on January 20, 2012 – the opening day of discovery. (*See* Dkt. 30, Scheduling/Discovery Order). Velcera served its written responses to Merial's discovery requests on February 22, 2012. However, Velcera stated in response to all nine of Merial's document requests, and in response to nine of Merial's eleven interrogatories, that Velcera would only "produce such information pursuant to the entry of a suitable protective order." To date, Velcera has not produced any documents in this matter nor given substantive responses to those interrogatories. Accordingly, Merial's burden of proof experts are unable to formulate their opinions prior to the March 13, 2012 deadline for their reports.

During the meet-and-confer process, Velcera agreed that an extension of the expert deadlines was appropriate. However, Velcera stated that it would not agree to any change in the expert report deadlines *unless Merial would agree to extend, by approximately thirty (30) days, the deadlines for both the close of discovery and the filing of motions for summary judgment.*¹

Given that it is Velcera's refusal to produce documents prior to the entry of a protective order that has created this situation, this kind of "horse trading" over discovery scheduling is

¹ Velcera seeks to move the close of discovery from June 15, 2012 to July 17, 2012, and the deadline for filing motions for summary judgment from July 30, 2012 to August 31, 2012.

particularly inappropriate.² Nevertheless, Velcera's position is that this extra time is needed to conduct additional discovery after Merial has served its expert reports. Merial believes that the existing five month discovery period, from January 20 to June 15, is sufficient for the parties to adequately prepare their respective cases for trial. Moreover, extending discovery in any case always increases the costs of litigation. While discovery extensions are appropriate in certain circumstances, Merial does not believe such circumstances exist here.

Accordingly, Merial proposes to extend the deadline for burden of proof expert reports an additional 30 days, until and including April 12, 2012. Merial further proposes that non-burden of proof expert reports be due on May 14, 2012. The parties further propose that the deadline for serving rebuttal reports be set 14 days later, on May 28, 2012.

This amendment to the Scheduling Order still allows the parties more than two months of discovery after serving burden of proof expert reports, including three weeks following the rebuttal report deadline. No reason exists to extend discovery beyond the current discovery close date of June 15, 2012.

CONCLUSION

In conclusion, Merial requests that the Court amend its Scheduling Order as set forth above.

² During the recent negotiations over the protective order, Merial informed Velcera that Merial would treat any documents Velcera produced as being subject to the protective order prior to its entry by the Court. Velcera nevertheless indicated that it would not produce documents until the protective order had been officially entered by the Court.

Respectfully submitted, this 7th day of March, 2012.

/s/ Edward D. Tolley

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CERTIFICATE OF SERVICE

I hereby certify that I have this date filed foregoing EMERGENCY MOTION TO AMEND SCHEDULING ORDER AS TO EXPERT REPORT DEADLINES, via the Court's CM/ECF system, which will automatically give notice to all counsel of record.

This 7th day of March, 2012.

s/ Edward D. Tolley

Edward D. Tolley